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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,309	11/07/2000	Patti C. Gilmer	FPC3 (6208.tba)	1250

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EXAMINER

WRIGHT, ANDREW D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/708,309

Applicant(s)

GILMER, PATTI C.

Examiner

Andrew Wright

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4-9,13-15 and 19-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 15 is/are allowed.
- 6) Claim(s) 1,2,4-9,13,14 and 19-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 November 2000 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- Notice of References Cited (PTO-892)
- Notice of Draftsperson's Patent Drawing Review (PTO-948)
- Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- Notice of Informal Patent Application (PTO-152)
- Other: _____

DETAILED ACTION

Drawings

1. The proposed drawing corrections were received on 2/23/2004. These drawings are not acceptable and are have not been entered. The drawings add new matter. 37 CFR 1.121(f) states that no amendment may introduce new matter into the disclosure of an application. The original disclosure does not support the showing of the relative spatial relationship between the flexion channels (70) and the area between the raised portions (66).
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one of said flexion channels does not correspond with portions of said buoyant material defined between said plurality of raised portions" (claims 1, 5, 7, 13, 14) must be shown or the feature(s) canceled from the claim(s). The drawings are not specified as being to scale. There is no view that shows the recited relative positions of the features. Corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. No new matter should be entered.
3. Applicant is advised that the proposed drawing correction practice has been discontinued. In order to comply with the revised amendment practice, applicant must submit replacement drawings with the desired changes already incorporated into the figures. See below for further information:

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

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Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 2, 4-9, 13, and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 1, 5, 7, 13, and 14 each contain a recitation regarding the relative position between the flexion channels and the buoyant material between the enhanced regions. This is not supported by the original disclosure. The drawings do not show this. The only mention of the flexion channels in the written description occurs at lines 16-21 of page 11. The written description is silent as to the location of the flexion channels, other than that they are inwardly disposed on the flotation element. The written description does not describe the location or placement of the flexion channels relative to the enhanced buoyancy regions.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 22 recites that the material provides a buoyant force "according to the Coast Guard values for personal flotation devices." This recitation renders the scope of the claim indefinite because regulations and standards are subject to change.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. Claims 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Grunstein et al. (US 6,260,199). Grunstein discloses a torso covering (1) with a pocket that holds a panel (column 3, line 61-62). The panel (11) is a unitary element comprising a back sheet and enhanced sections. The enhanced regions are formed by heat compression of panel of foamed material along certain crease lines (12-15). The crease lines lie between the front and rear surfaces of the panel. The regions not

creased remain thicker than the rest of the sheet and constitute enhanced regions. The material in the crease lines defines the thickness of the backsheet. Creasing results in a layer of substantial uniform thickness with raised portions that extend outward from the layer of uniform thickness.

11. Regarding claim 20, Grunstein shows panel (11) in the torso covering. One of the enhanced regions above crease line (15) is higher on the torso than other parts of the pad and therefore is located at an upper torso region. Regarding claim 21, one of the enhanced regions below crease line (16) is lower on the torso than other parts of the pad and therefore is located at a lower torso region.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grunstein et al. (US 6,260,199). Grunstein does not disclose that the magnitude of buoyant force provided by the material. The Coast Guard standards (Type I, II, III, etc.) of buoyant force for personal flotation devices (pfd's) are well known, and it is common to design floatation garments in accordance with the standards. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Grunstein by providing sufficient buoyant material to meet the buoyancy

requirements of the Coast Guard standards. The motivation would be to provide adequate floatation for the intended user.

Allowable Subject Matter

14. Claim 15 is allowed.

Response to Arguments

15. Applicant's arguments filed on 2/23/2004 have been fully considered but they are not persuasive. Applicant argues that figures 12A, 12B, 13A, and 13B support the limitations that cause the claims to be rejected under 35 USC 112, 1st Paragraph. The original disclosure does not support the showing of the relative spatial relationship between the flexion channels (70) and the area between the raised portions (66). The original specification is silent as to the location of the flexion channels relative to the raised portions. The original specification only mentions the channels (70) on page 11 and does not describe the location of the channels other than that they are on the back sheet (68). The original drawings show the flexion channels (70) in two figures: figure 12B and figure 13B. Neither figure 12B nor figure 13B shows the position of the channel relative to the material between the raised portions (66). Applicant asserts in the remarks section that, because figure 12A is a front view and figure 12B is a back view of the same element, the figures do show the relative position of the channels (70) and the material between the raised portions (66). This argument is not persuasive

because the drawings are not to scale. Since the drawings are not to scale, the proportions of the features in the drawings are not evidence of the actual proportions.

16. Applicant argues that the proposed drawing correction traverses the drawing rejection. The proposed drawing correction has not been entered because it would have added new matter. Therefore, the drawing objection remains.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

18. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for

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official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright
Patent Examiner
Art Unit 3617

AW 5/20/04